

REMARKS

The above-noted amendments are respectfully submitted in response to the official action dated January 22, 2008. The limitations requiring that the pair of parallel pivot pins comprise only a single pivot pin on each side of the window sash are specifically supported in ¶¶ [0066] through [0068] of the specification and in the drawings, particularly in Figures 1A, 5 and 6 thereof. The limitations with respect to the shape of the kidney shaped receptacles are specifically supported in ¶ [0063] of the specification and in the drawings, particularly in Figures 3, 3A, 4 and 4A hereof.

Throughout the rather lengthy prosecution of this application, including the initial action on the merits dated August 11, 2005, although the rejections were quite different than the present rejections, the applied art always included Menegazzo, U.S. Patent No 6,018,911. In every response since that date, including the response filed on January 10, 2006, applicant has consistently taken the position that this reference "fails to teach a kidney shaped opening formed within the frame." Applicant further took the position that Menegazzo only taught use of a channel formed on a side frame or vertical leg of the window frame, and the Examiner apparently agreed with these assertions, since no other rejections were made on this basis.

Now, for the first time, after applicant has finally overcome the voluminous rejections interposed by the Examiner throughout this lengthy prosecution, the Examiner has changed his position, and now states that Menegazzo actually anticipates most of the claims in this application under 35 U.S.C. § 102(b). The Examiner's position, without a great deal of fanfare, is to the effect that a pair of kidney shaped receptacles (17) top or bottom and (18) comprise slots therein, and disposed within the window frame (2) which accommodates movement of the window

sash (4). Applicant believes that the Examiner's position is entirely incorrect. However, if it were not, and Menegazzo actually did anticipate some of these claims, there was a massive waste of time in the last two and a half years of prosecution in this case. Perhaps that changes nothing with respect to the present Office Action, but it certainly casts at least some doubt on the Examiner's position with respect to this reference since nobody, including the Examiner, recognized its significance, if any, prior to the present date.

Turning to Menegazzo itself, applicant believes that it clearly does not include the kidney shaped receptacles required by all of the claims in this application from the outset. Nevertheless, in an attempt to expedite the allowance of this case, applicant has amended the claims, not only to more clearly specify the nature of a kidney shaped receptacle, which applicant believes to be crystal clear, but to also include limitations with respect to the pivot pins used in applicant's invention which, by itself, clearly distinguishes over Menegazzo.

Claims 1, 2, 4-6, 10, 11, 13, 15, 17, 19, 20, 22, 23, 25, 26, 29, 30, 32, and 35-41 have been rejected as being anticipated by Menegazzo under 35 U.S.C. § 102(b). The Examiner contends that Menegazzo discloses a window assembly (1) with a window frame (2) which is said to include 2a, 2b, and 2c (both vertical size)) a window sash (4) which includes 8a, 8b and 9 (both vertical size) for positioning in a window frame (2) which includes 2a, 2b, and 2c) both vertical size)) and which is capable of moving from a closed to an open tilted position and vice versa, as well as a pair of parallel pivot pins (15 and 15b) on the window sash, a pair of kidney shaped receptacles (17) top or bottom) and 18)) comprising slots therein and disposed within the window frame accommodating movement of the window sash from the closed to the open tilted position and vice

versa, and channels 16. Menegazzo is said to further disclose the window sash cooperating with the window frame to limit the extent of the open tilted position (the slots and grooves formed by the channels (see Figure 3)) and that Menegazzo further discloses a water dam (Figures 2 or 3, element 2B as a sloped portion and a vertical portion) for eliminating water through the window opening and a support means (the engagement between the pins and the sliding groove). This rejection is respectfully traverse in view of the above amendments and arguments and for the reasons set forth hereinafter.

Menegazzo does disclose a window assembly which includes a window frame with opposite side portions including substantially planar surfaces. It also discloses a window sash for positioning within the window frame which is capable of moving from closed to open tilted positions. According to Menegazzo, each of the side pieces of the shutter 4 has a pivotal mounting region 11a in alignment with first cross piece 8a and from which a cylindrical pivot pins 15 including a first pivot pin 15a and a second pivot pin 15b which merge and extend to the vertical borders 7. In every embodiment and in the entire disclosure of Menegazzo, two pairs of these pivot pins are used, and they are in fact critical to the operation of that device. Applicant's claims are specifically directed to only a single pivot pin on each side of the window sash. Indeed, it is the cooperative engagement of these single pivot pins with the kidney shaped receptacles which so clearly distinguishes applicant's invention from that of Menegazzo.

The pairs of pivot pins in Menegazzo, on the other hand, cooperate with specifically designed channel guides 16. These include a first furrow 17 and a second furrow 18 which are "consecutive and perpendicular to each other." (Col. 4 1.43.) Indeed, this disclosure goes on to state that these two furrows together define a right angled shape the vertex of which is

facing the abutment plain 5. The shape and configuration of these furrows are important elements in the Menegazzo invention, since they cooperate with the pairs of pivot pins discussed above. Thus, Menegazzo fails to disclose all of the most critical elements of the present inventions, far from anticipating these claims.

A kidney shaped receptacle as discussed and specifically shown in the present specification clearly has the shape of a kidney bean or kidney, a well-known shape. The shape is defined in the specification by dimensions in the particular embodiment shown, but includes upper and lower radii which define the circular upper and lower portions thereof, and could not possibly be disclosed by the right angled furrows discussed in Menegazzo. In any event, as more clearly defined in the present claims, it is now clear beyond question that the specific kidney shaped receptacles of the present claims are quite different from and distinguishable over the right angled linear furrows of Menegazzo. As for the additional claims which are said to be anticipated by Menegazzo, there are a number of additional limitations therein which are clearly not shown in this reference. Claim 2, for example, requires that the window sash cooperate with the window frame and abut the window frame at its lower portion to limit the extent of open tilted position. This can be seen, for example, in Figures 9 and 10 in the present application. This can also be contrasted to the disclosure in Menegazzo, where, for example, as shown in Figure 9, the complete open position is determined by the position of pivot pins 15 fitted into a pair of seatings formed on one seating 20d and one seating 20e or 20b.

Claim 5 requires that the lower portion of the window frame include a water dam and that the window sash engage the water dam to define a maximum open tilted position. Again, this is shown in Figures 9 and 10 of the present application and is

nowhere shown in Menegazzo. The Examiner's position that element 2b and Figures 2 and 3 of Menegazzo somehow constitutes such a water dam is entirely without support. To the contrary, 2b refers to the inside of the frame, and has no relationship or even potential contact with the sash, again as shown in Figure 9 of Menegazzo.

Similar comments can be made with respect to claim 6 and even more particularly, to the water dam as defined therein, as well as other dependent claims which include these limitations. It is therefore respectfully requested that this rejection be withdrawn.

Claims 3, 12, 18, 27 and 33 have been rejected as being unpatentable over Japanese Patent 58-210289 to Showa in view of Yanessa U.S. Patent No. 4,222,201 under 35 U.S.C. § 103(a). The Examiner contends that all of the elements of the instant invention are discussed in detail except for providing the pivot pins to be retractable. Yanessa '201 is said to disclose a sliding/pivoting sash having pivot pins which are retractable and the Examiner concludes it would be obvious to provide the Japanese patent to Showa to retractable pins as taught by Yanessa '201 since they allow the sash to be removed and attached to the window frame. This rejection is respectfully traversed in view of the above amendments and arguments and for the reasons set forth hereinafter.

Even assuming that Yanessa discloses retractable pins, albeit in a totally different structure from that of either Showa or the present claims, it is clear that this fact would not overcome the deficiencies of the Showa patent with respect to all of the principle limitations of the claims from which these rejection claims depend. Thus, even if the Examiner had combined Yanessa with Menegazzo (instead of Showa), applicant would reiterate all of his above noted contentions with respect to the deficiencies of that reference. However, in the face of

the Examiner's citation of Showa, applicant need only refer to all of his prior contentions with respect to the overall deficiencies of Showa, which, in fact, appear to have been accepted by the Examiner. Thus, turning for example to the argument beginning on page 10 of applicant's response to the Official Action of August 25, 2006, a detailed discussion was set forth with respect to the nature of the Showa patent, particularly referring to Figure 4 thereof. The single shaft 18 which in Showa can not only pass through the parts 14, but also through the cylindrical shaft insert-through part 11 attached to the fold back part 9 of attachment 10, was contrasted to the kidney shaped receptacle or channel 210 and 212 as shown in Figures 3 and 3a hereof. Since the Showa patent has apparently not been applied against the independent claims in this application, but only to the dependent claims requiring a retractable pivot pin, it appears that the Examiner has accepted applicant's prior arguments in this regard. It is therefore respectfully requested that this rejection also be cancelled.

As it is believed that all of the rejections set forth in the Official Action have now been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: July 17, 2008

Respectfully submitted,

By 

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